U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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[redacted]

DATE: APR 0 3 2012 Office: MEXICO CITY, MEXICO [redacted]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 29, 2009.

On appeal, the applicant's spouse asserts that he is suffering emotionally without the applicant and that his children are experiencing extreme hardship in Mexico and missing the opportunities provided to them in the United States. *Form I-290B*, received on October 28, 2009.

The record includes, but is not limited to, counsel's brief; statements from the applicant's spouse and children; medical records pertaining to the applicant's children in Mexico; an employment letter for the applicant's spouse; a statement from [redacted], dated October 27, 2008, and related to the applicant's spouse; and educational records pertaining to the applicant's children.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .

The record indicates that the applicant entered the United States without inspection in 1995 and remained until she departed in July 2008. Therefore, the applicant was unlawfully present in the United States for over a year from April 1, 1997, the effective date of the unlawful presence

provision of the Act until July 2008, and is now seeking admission within ten years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22

I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's spouse asserts on appeal that his children are experiencing extreme hardship in Mexico, and that his entire family is at risk from the dangerous environment in Mexico. *Statement of the Applicant's Spouse on appeal*, received October 28, 2009. The applicant's spouse explains that his children have been experiencing emotional problems due to relocation, and have been attending therapy and taking prescription medications. He further explains that he would not be able to support his children financially due to the lack of jobs in Mexico.

The AAO does take note of the violent conditions in some parts of Mexico, as discussed in the Consular Report published by the U.S. State Department, Bureau of Consular Affairs, February 8, 2012. However, the applicant has not established that a qualifying relative currently resides in the areas threatened with conflict, nor are there any country conditions materials or other documents submitted by the applicant to establish that the applicant would be unable to find employment in order to help sustain herself and her children.

The record does contain medical records pertaining to the applicant's sons from doctors in Mexico. In an undated letter from [redacted] of Clinica Medica Coifac in Chihuahua, Mexico, states that the applicant's son shows symptoms of depression, anxiety, aggression and is emotionally stable due to separation from the applicant's spouse and the United States. The record also contains lab results for a blood test on the applicant's sons in Mexico, however, the AAO is not qualified to interpret raw medical data and the relevance of this evidence is not clear. The record contains what appears to be a prescription notice from a Mexican pharmacy, however the document is in Spanish and cannot be considered for the purposes of this proceeding.[1] The record also contains educational records and certificates for the applicant's children, and statements from friends and family members of the applicant and her spouse.

As noted above, children are not qualifying relatives in this proceeding. However, hardship impacts to an applicant's child or children may be considered to the extent that they result in an indirect impact on the qualifying relative, in this case the applicant's spouse. The evidence submitted to establish impacts on the applicant's children are sufficient to indicate that they are experiencing some emotional hardship due to relocation to Mexico, however, the evidence is not sufficiently probative to establish that the impacts arising from relocation rise above the common impacts of relocation to a degree that they indirectly impact the applicant's spouse, who in this case is residing in the United States. In addition, the AAO notes that the applicant's children are U.S. citizens and it has not been established that they could not reside in the United States with the applicant's spouse.

With regard to separation the applicant's spouse asserts that he misses the applicant, and his children who reside with her in Mexico, and that he is experiencing emotional stress due to the separation. He explains that he worries about their safety in Mexico, but that he works long hours and is unable to care for their children in the United States. He also explains that he is struggling to support two households financially. He further states that his children are suffering hardship because they will not have access to the educational opportunities in the United States, and that they do not have the medical benefits they could have if they resided with him in the United States.

The record does not contain any documentation establishing the applicant's spouse's income, or any evidence that he is unable to meet his financial obligations. The record does not contain anything which indicates the applicant's spouse would be unable to afford child care services or after-school child care for his sons if they resided in the United States. Without documentation that the applicant's spouse is unable to meet his financial obligations or afford child care to keep his children in the United States, the record fails to establish that he will experience any uncommon financial impact due to separation.

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[1] The regulations at 8 C.F.R. § 103.2(b)(3) require that any document containing foreign language submitted to USCIS be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

With regard to emotional hardship, the record contains a statement from [redacted] stating that the applicant's spouse is under a great deal of stress due to the applicant's inadmissibility and that it is causing the applicant's spouse "medical issues." The brief statement provided by [redacted] is not sufficient to distinguish the any emotional impact on the applicant's spouse from that which is commonly experienced by the relatives of inadmissible aliens. The record lacks any other documentation to corroborate the [redacted] statement or provide any basis upon which to distinguish the applicant's spouse's emotional stress. Nonetheless, the AAO will give some consideration to the emotional impact on the applicant's spouse when aggregating the impacts upon separation.

With regard to the lack of access to medical resources for the applicant's spouse or children, the AAO notes that the record contains medical records pertaining to the applicant's children, thus, it is not clear how their medical needs are not being met. While the AAO acknowledges the applicant's children may be experiencing some emotional impact due to relocation, there is insufficient evidence that the applicant's spouse is experiencing any uncommon emotional hardship due to the impacts on them. In addition, the fact that educational or other opportunities for the applicant's children may be better in the United States does not constitute an uncommon hardship factor which impacts the applicant's spouse, as such, the AAO cannot consider this when aggregating the impacts on the applicant's spouse due to separation.

When the hardship factors asserted upon separation are examined in the aggregate, they fail to establish that the applicant's spouse will experience hardship rising to the level of extreme.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. The AAO acknowledges the impacts the applicant's spouse would prefer the applicant to reside in the United States and that he is suffering an emotional impact due to separation. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.